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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-201725.2

DATE: March 5, 1982

MATTER OF: National Health Services, Inc.

DIGEST:

Subcontractor contends that procuring agency improperly disapproved of subcontract. Because prospective prime contractor, for its own business reasons, is not interested in entering a subcontract with protester, resolution of issue by GAO would not affect subcontractor selection. Therefore, protest is dismissed as academic.

National Health Services (NHS) protests the failure of the National Aeronautics and Space Administration (NASA) to approve a subcontract between NHS and Compton Associates. Compton was awarded a prime contract under request for proposals (RFP) W-10-22486/HWE-2, a small business set-aside for support services at the NASA Headquarters Health Unit. We dismiss the protest because we regard it as academic.

NHS, a large business, held the previous contract for this requirement. Dr. Compton, who had been employed by NHS as medical director at NASA Headquarters, formed Compton Associates to compete for the small business set-aside. Compton Associates' proposal contemplated a subcontractual arrangement under which NHS would provide certain managerial and administrative services. In the course of evaluating Compton's proposal, NASA determined that the technical qualifications and capabilities of NHS were acceptable, but expressed to Compton its concern that the proposed subcontract amounted to a prohibited cost-plus-a-percentage-of-cost arrangement. NASA also requested that detailed cost and pricing data relating to the subcontract be supplied by Compton. This data was considered vital because the RFP contemplated a cost-reimbursement prime contract. Despite the reservations concerning the cost arrangement and the lack of data, in December 1980, NASA selected Compton Associates for award.

Compton eventually presented to NASA a revised subcontract under which NHS would perform the same services it had agreed to in the initial subcontract and receive a fixed fee rather than costs-plus-a-percentage-of-costs. Thereafter, NASA contracting officials met with Dr. Compton to discuss the revised subcontract. The record indicates that NASA officials informed Dr. Compton that, in NASA's view, NHS's involvement in the procurement continued to be so extensive as to amount to de facto control of Compton Associates and that the proposed arrangement was inconsistent with the goals of the Small Business Act.

Dr. Compton responded that the agreement with NHS was never completely acceptable to him. He stated that he had already entered into a subcontract with another party to perform bookkeeping functions, a substantial part of the proposed subcontract with NHS, and that he believed the best solution would be to terminate his relationship with NHS immediately.

NHS contends that NASA's disapproval of NHS as a subcontractor was improper in view of a previous Small Business Administration Size Appeals Board determination that neither Dr. Compton's former employment with NHS nor the proposed subcontract established affiliation between the two firms and that Compton is a small business for purposes of this procurement. NHS requests that we direct NASA to approve the subcontract between Compton and NHS.

Generally, we do not consider subcontractor protests, except in limited situations. See Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166. In any case, this protest essentially is academic. The record clearly indicates that Compton, for various business reasons, is no longer interested in obtaining the services from NHS. Compton states that it felt that the fees demanded by NHS were excessive and that NHS improperly sought to bind Compton to extensions of the subcontract. Under the circumstances, even if we reviewed NHS's protest and found it meritorious, a recommendation that NASA reconsider its disapproval of NHS would not make a difference in the selection of the subcontractor; regardless of NASA's views on the matter, Compton would not enter a contract with NHS. See Data-products New England, Inc.; Honeywell Inc.; Tracor Aerospace, B-199024, January 9, 1981, 81-1 CPD 16.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel